

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

\_\_\_\_\_  
ENRICO FABRIANO LANZA,  
Petitioner,

v.

\_\_\_\_\_  
DISTRICT ATTORNEY OF DELAWARE  
COUNTY, et al.,  
Respondents.  
\_\_\_\_\_

CIVIL ACTION NO. 12-5528

**FILED**

JUL 15 2013

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

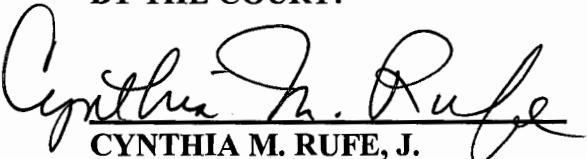
**ORDER**

AND NOW, this 15<sup>th</sup> day of July 2013, upon careful and independent consideration of the Petition for Writ of Habeas Corpus [Doc. No. 1], the response thereto [Doc. No. 7], and the record, and upon review of the Report and Recommendation of United States Magistrate Judge Thomas J. Rueter [Doc. No. 9], to which Petitioner filed no objections, it is hereby **ORDERED** that:

1. The Report and Recommendation [Doc. No. 9] is **APPROVED** and **ADOPTED**;<sup>1</sup>
2. The Petition for Writ of Habeas Corpus is **DENIED**;
3. There is no probable cause to issue a certificate of appealability; and
4. The Clerk of Court is **DIRECTED** to mark this case closed for statistical purposes.

It is so **ORDERED**.

**BY THE COURT:**

  
CYNTHIA M. RUFÉ, J.

<sup>1</sup> While the single ground for relief set forth in the petition for writ of habeas corpus was capable of being interpreted in two ways, both of which were addressed by the respondents in their brief in opposition, Petitioner has not objected to Magistrate Judge Rueter's decision to "construe the claim raised in the habeas petition as one challenging the sentence enhancement under the state sentencing guidelines." The Court finds that Magistrate Judge Rueter correctly construed Petitioner's intent. The Court also agrees with the R & R's conclusion that Petitioner's challenge concerns the state court's application of state law, and is not cognizable in a federal habeas proceeding. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).